IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/07/2002

Coram

The Honourable Mr. Justice V.S. SIRPURKAR

W.P. No.14349 OF 1995

Meirs Pharma India Pvt. Ltd
rep. by its Director :: Petitioner

Vs

1. Union of India rep. by its
Secretary, Ministry of
Commerce, New Delhi

2. The Director General of
Foreign Trade, New Delhi

3. The Bank of Madura
rep. by its Manager
Madras-2 :: Respondents

Petition under Art.226 of the Constitution
for a Writ of Certiorarified Mandamus
as stated in the petition

For Petitioner :: Mr. R. Thiagarajan, S.C.
For Mr. M. Muthappan

For Respondents :: Ms. Christella for R3
No Appearance for others

:ORDER

Petitioner is a company, registered under the Companies Act.
It took advantage of the scheme framed by the Government of India, known as "Export Promotion Capital Good Scheme" under which, the capital goods for manufacturing purposes were allowed to be imported with a concessional rate of duty. There was an export obligation attached to the said concession to the effect that the importer would be liable to export goods worth three times the value of the machinery within four years from the date of first clearance of the machinery.

2. A licence was obtained by the petitioner for import of

some machinery, the details of which are given in paragraph 3 of the affidavit filed in support of the petition. The value of the said machinery was DM.5,12,126 whereas the export obligation attached to the said licence was US$906262 which was to be fulfilled within four years of the first date of clearance of the consignment which was on 2-12-1991. For the purpose of this, the company also had to furnish a bank guarantee to the Director General of Foreign Trade, Udyog Bhavan, New Delhi (3rd respondent herein) and in this case, the bank guarantee was of Rs.63,00,000/-. This guarantee was given for a period of five years from 9-11-1991.

3. The petitioner pleaded that for various reasons such as nonavailability of the contract licence in time; non-availability of World Health Organisation Good Manufacturing Practice certificate, etc., the export obligation undertaken by the petitioner could not be honoured in the sense that by 1995, the company was able to make the export only of the goods worth US$9000, which was almost about one-tenth of its export obligation. The company, therefore, made an application on 25-8-1995 to the 2nd respondent for extension of time to honour its export obligation. In this application, the company expressed its inability on account of the various reasons which have been indicated earlier in this order such as non-availability of contract licence, etc.

4. The petitioner company thereafter complains that in spite of the extension application having been filed originally on 26-3-1995 and thereafter in proper proforma on 25-8-1995, there was no response from the 2nd respondent on this extension application at all. The 2nd respondent, however, invoked the bank guarantee given in favour of it by the petitioner company through the 3rd respondent bank by letter dated 29-9-1995. The petitioner company pleads that though the period of export obligation was to come to an end by 1-12-1995, it had made an application well in advance, i.e. on 26-3-1995 to begin with and thereafter in proper proforma on 25-8-1995 yet the 2nd respondent remained under coma for the reasons best known to it without deciding the extension application one way or the other. In that view, the company filed this writ petition whereby it sought the quashing of the order dated 29-9-1995 by which the 2nd respondent had sought the invoking the bank guarantee.

5. The writ petition was entertained and the invocation of the bank guarantee was also stayed. It is now after seven years that the petition comes before me for decision.

6. Learned senior counsel, Mr. R. Thiagaranan, appearing for the petitioner says that even till today the said application for extension of time has not been decided by the 2nd respondent one way or the other. With the result, that even till today it is not known as to whether the authority was in a position to allow the extension of time to honour the export obligation. He points out that because of that the petitioner could not export its goods as there would be no clearance for the goods in the absence of such extension.

7. Unfortunately, at the time of hearing, there was no

representation on behalf of the respondents 1 and 2. Learned counsel appearing for the 3rd respondent pointed out that the bank was bound by the stay order granted by the Court as back as on 19-10-1995 and, therefore, the bank has guarantee not been able to be invoked by the 2nd respondent. In that view, learned counsel says that there should at least be a direction to the 2nd respondent to decide the application for extension of time one way or the other.

8. There can be no doubt that in this case, the 2nd respondent as also the 1st respondent has shown the utter apathy so much so that in these seven years even the counter has not been filed refuting the allegations made in the petition. Very interestingly, though the invocation of the bank guarantee came to be stayed by an interim order in the writ petition, even no petition for vacating the said interim order has been made on behalf of the respondents 1 and 2, who were the only persons to suffer.

9. Be that as it may, it is obvious that right from 26-3-1995 or as the case may be 25-8-1995, there is no action on the part of the 2 nd respondent in deciding upon the petitioner's application for extension of time one way or the other. There is no explanation before me as to why the said application remains undecided or if it is already decided, what is the fate thereof. It is obvious that the said application has not been decided so far because no such intimation has been given to the petitioner. Therefore, it would be in the fitness of the things to direct the 2nd respondent to decide that application, after hearing the petitioner or its representative as the case may be, within two months from the date of receipt of this order.

10. However, before parting with the judgment, it must be said that there could not have been any stay of the invocation of the bank guarantee because there was no question of fraud involved in all these matters for obtaining the bank guarantee at least none is pleaded in the writ petition. The apathy on the part of the particular authority could not be spelt out as a fraud so that the said authority could not have invoked the bank guarantee. Therefore, even if the writ petition succeeds partly, the interim order would stand vacated. However, the petitioner may take such steps to persuade the 2nd respondent to take any other view of the matter.

11. With these observations, the writ petition is disposed of. No costs. W.M.P. No.22817 of 1995 is closed.

Index:Yes.
Website:Yes.
Jai
12-07-2002

To:

1. Secretary
Ministry of Commerce

Union of India
Udhyog Bhavan
New Delhi

2. The Director General of
Foreign Trade, Udhyog Bhavan, New Delhi

V.S. SIRPURKAR, J.